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IN THE

# Supreme Court of the United States

October Term 1995

In re CHATEAUGAY CORPORATION,
REOMAR, INC.,
THE LTV CORPORATION, *et al.*,

*Debtors.*

LTV STEEL COMPANY, INC.,
BCNR MINING CORPORATION,
NEMACOLIN MINES CORPORATION, and
TUSCALOOSA ENERGY CORPORATION,

*Petitioners,*

v.

DONNA E. SHALALA, Secretary, Department of Health and Human Services; MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY; THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, MICHAEL H. HOLLAND, as Trustee of the Combined Fund, and WILLIAM P. HOBGOOD, as Trustee of the Combined Fund,

*Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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July 14, 1995

181 pp

## QUESTIONS PRESENTED

Whether this Court should review the decision of the Court of Appeals for the Second Circuit because it (1) extends a conflict among the circuits concerning the scope of the definition of "claim" in the Bankruptcy Reform Act of 1978, and (2) interprets the Coal Industry Retiree Health Benefits Act of 1992 to reverse a prior final judgment between the parties in violation of the Constitutional requirements of the separation of powers doctrine?

## STATEMENT PURSUANT TO RULE 29.6 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States and to enable justices of the Court to evaluate possible disqualification or recusal, Petitioner LTV Steel Company, Inc. states that it is a wholly owned subsidiary of The LTV Corporation, and that other than The LTV Corporation, it has no parent companies, subsidiaries or affiliates that have issued shares to the public. Petitioners BCNR Mining Corporation, Nemacolin Mines Corporation and Tuscaloosa Energy Corporation state that they are wholly owned subsidiaries of Petitioner LTV Steel Company, Inc. and that they have no parent companies, subsidiaries or affiliates that have issued shares to the public.

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| Opinions Below | 2 |
| Jurisdiction | 2 |
| Constitutional Provision and Statutes Involved | 3 |
| Statement of the Case | 3 |
| REASONS FOR GRANTING THE WRIT | 10 |
| I. THIS COURT SHOULD ADDRESS THE CONFLICT AMONG THE CIRCUITS CONCERNING THE REACH OF "CLAIM" | 10 |
| II. THIS COURT SHOULD ADDRESS SEPARATION OF POWERS ISSUES RAISED BY THE DECISION | 15 |
| CONCLUSION | 18 |

## TABLE OF AUTHORITIES

*Decisions*

PAGE

*Baldwin* v. *Iowa State Traveling Men's Ass'n*, 283 U.S. 522 (1931) ..... 15

*Begier* v. *Internal Revenue Service*, 496 U.S. 53 (1990) ..... 11

*Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394 (1981) ..... 15

*Franklin Sav. Ass'n* v. *Office of Thrift Supervision*, 31 F.3d 1020 (10th Cir. 1994) ..... 15

*Grady* v. *A.H. Robins Co.*, 839 F.2d 198 (4th Cir.), *cert. dismissed sub nom. Joynes* v. *A.H. Robins Co.*, 487 U.S. 1260 (1988) ..... 14

*In re A.H. Robins Co.*, 880 F.2d 709 (4th Cir.), *cert. denied sub nom. Anderson* v. *Aetna Cas. and Sur. Co.*, 493 U.S. 959 (1989) ..... 13

*In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991), *cert. denied sub nom. United Mine Workers of America 1974 Ben. Plan and Trust* v. *LTV Steel Co.*, 502 U.S. 1093 (1992) ..... 5

*In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 3 F.3d 200 (7th Cir. 1993) ..... 13

*In re Colortex Indus., Inc.*, 19 F.3d 1371 (11th Cir. 1994) ..... 12

*In re Hemingway Transp., Inc.*, 954 F.2d 1 (1st Cir. 1992) ..... 14

*In re Jensen*, 127 B.R. 27 (Bankr. 9th Cir. 1991), *aff'd*, 995 F.2d 925 (9th Cir. 1993) ..... 14

*In re M. Frenville Co.*, 744 F.2d 332 (3d Cir. 1984), *cert. denied sub nom. M. Frenville Co.* v. *Avellino & Bienes*, 469 U.S. 1160 (1985) ..... 14

*In re Penn Central Transp. Co.*, 944 F.2d 164 (3d Cir. 1991), *cert. denied sub nom. Penn Central Corp.* v. *United States*, 503 U.S. 906 (1992) ..... 13, 14

*Johnson* v. *Home State Bank*, 501 U.S. 78 (1991) .... 13

*Lemelle* v. *Universal Mfg. Corp.*, 18 F.3d 1268 (5th Cir. 1994) ..... 14

*Marbury* v. *Madison*, 1 Cranch 137 (1803) ..... 17

*Morton* v. *Mancari*, 417 U.S. 535 (1974) ..... 11

*Nathanson* v. *National Labor Relations Board*, 344 U.S. 25 (1952) ..... 12

*Plaut* v. *Spendthrift Farm, Inc.*, ___ U.S. ___, 115 S. Ct. 1447 (1995) ..... 16, 17

*United States* v. *Sioux Nation of Indians*, 448 U.S. 371 (1980) ..... 16

*Constitutional Provision and Statutes*

U.S. Const. art. III ..... 3
28 U.S.C. § 1254(1) ..... 2
28 U.S.C. § 1291 ..... 2
28 U.S.C. § 1331 ..... 2
28 U.S.C. § 1334 ..... 2
11 U.S.C. § 101(5) ..... 3, 12
11 U.S.C. § 101(12) ..... 11

11 U.S.C. § 362 ..... 11
11 U.S.C. § 503 ..... 12
11 U.S.C. § 507 ..... 12
11 U.S.C. § 1113 ..... 12
11 U.S.C. § 1114 ..... 12
11 U.S.C. § 1141(d)(1)(A) ..... 11
Coal Industry Health Benefits Act of 1992, 26 U.S.C. § 9701 *et seq* ..... 3

*Legislative Materials*

H.R. REP. NO. 595, 95th Cong., 2d Sess. (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963 ..... 13

*Other Authorities*

ELIZABETH WARREN, BUSINESS BANKRUPTCY (1993) .. 11

**APPENDICES**

*In re Chateaugay Corp.*, 53 F.3d 478, (2d Cir. 1995) ..... A-1
*In re Chateaugay Corp.*, 163 B.R. 955 (S.D.N.Y. 1993) ..... B-1
*In re Chateaugay Corp.*, 154 B.R. 416 (S.D.N.Y. 1993) ..... C-1
*In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991) ..... D-1
Coal Industry Health Benefits Act of 1992, 26 U.S.C. § 9701 *et seq* ..... E-1

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LTV STEEL COMPANY, INC.,
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DONNA E. SHALALA, Secretary, Department of Health and Human Services; MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY; THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, MICHAEL H. HOLLAND, as Trustee of the Combined Fund, and WILLIAM P. HOBGOOD, as Trustee of the Combined Fund,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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## PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Second Circuit, filed June 5, 1995.

## OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit is reported at 53 F.3d 478 (2d Cir. 1995) and is reprinted in the Appendix (''App.'') accompanying this Petition at pages A-1 to 46. The opinion of the United States District Court for the Southern District of New York (Martin, J.) is reported at 163 B.R. 955 (S.D.N.Y. 1993) and is reprinted at App. B-1 to 20. The opinion of the United States District Court for the Southern District of New York (Martin, J.) is reported at 154 B.R. 416 (S.D.N.Y. 1993) and is reprinted at App. C-1 to 18. The decision of the United States Court of Appeals for the Second Circuit is reported at 945 F.2d 1205 (2d Cir. 1991) and is reprinted at App. D-1 to 20.

## JURISDICTION

The District Court had subject matter jurisdiction of this case under 28 U.S.C. §§ 1331 and 1334 as a case which arises under the Bankruptcy Reform Act of 1978, as amended (the ''Bankruptcy Code''), and which challenges the legality and constitutionality of a federal statute, the Coal Industry Retiree Health Benefits Act of 1992 (the ''Coal Act''). The Court of Appeals for the Second Circuit had appellate jurisdiction of this case under 28 U.S.C. § 1291 as an appeal from a final judgment entered on December 28, 1993, which dismissed LTV Steel's complaint in its entirety. LTV Steel filed its notice of appeal on January 13, 1994, within the time period allowed under Rule 4 of the Federal Rules of Appellate Procedure. The Second Circuit filed its opinion on April 17, 1995 and issued its mandate on June 5, 1995.

This Court has appellate jurisdiction of this case under 28 U.S.C. § 1254(1), which permits review by writ of *certiorari* after rendition of a judgment or decree by a United States Court of Appeals.

## CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Article III, section 1, of the United States Constitution states, in pertinent part:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Section 101(5) of the Bankruptcy Code, 11 U.S.C. § 101(5) provides that:

> "Claim means
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured[.]"

The Coal Industry Retiree Health Benefits Act of 1992, 26 U.S.C. § 9701 *et seq.*, is reprinted in the Appendix accompanying this Petition at App. E-1 to 47.

## STATEMENT OF THE CASE

The Court of Appeals for the Second Circuit holds that a contract obligation, which was entered into before the filing of a bankruptcy petition and which expired during the bankruptcy proceeding, is of sufficient substance to support imposition of post-confirmation liability on the debtor, yet of insufficient substance to give rise to a "claim" under the Bankruptcy Code. The decision raises two issues requiring

review in this Court. These are 1) the scope of the Bankruptcy Code definition of ''claim'' with respect to post-petition legislation that imposes liabilities arising exclusively from pre-petition conduct; and 2) the proper construction of legislation that has been interpreted to reverse a final judgment. On the first issue, the courts of appeals are in sharp conflict. On the second issue, the Second Circuit's decision creates an unconstitutional violation of the separation of powers doctrine.

## Background

From 1950 to 1984, LTV Steel Company, through its predecessors and subsidiaries (''LTV Steel''), was signatory to National Bituminous Coal Wage Agreements (''Wage Agreements''). App. A-9, 34. The Wage Agreements governed the terms and conditions of the employment of mine workers. The Agreements provided that in return for their labor, the mine workers would be paid both in current wages and in future benefits payable after retirement. The Wage Agreements were structured to provide future retiree health benefits through two trusts. Employers were obligated, during the term of a Wage Agreement, to make contributions to these trusts based upon tons of coal mined. App. A-5. The trusts were charged with maintaining the funds and making benefit payments to retired mine workers.

## The Bankruptcy and Prior Final Decision

In 1986, overwhelmed by retiree liabilities, LTV Steel and over fifty affiliated companies filed for bankruptcy. App. A-11. Shortly after the filing, LTV Steel received court authority to pay pre-petition retiree benefits, including payments due to the trusts under the Wage Agreements.

LTV Steel had ceased coal operations in the early 1980's. In 1988, LTV Steel's obligation to provide benefits to the mine worker retirees ended when the last Wage Agreement to which LTV Steel was a party expired. App. A-11. LTV Steel

had fully performed under the Wage Agreements. However, one of the mine worker trusts, the "Benefit Trust", contended despite the express terms of the Wage Agreements that the Retiree Benefits Bankruptcy Protection Act, enacted in 1988,[1] extended LTV Steel's liability for benefits. Litigation ensued. Ultimately, the Court of Appeals for the Second Circuit held that LTV Steel had no further obligations arising under the pre-petition Wage Agreements.

> "According to the terms of the Wage Agreement, the Mining Companies [LTV Steel and its coal mining subsidiaries] were responsible for the provision of benefits during the term of the Wage Agreement. When that Agreement expired, however, that obligation shifted to the Benefit Trust. The Benefit Trust is now responsible for the continued provision of the retiree health benefits. This conclusion is consistent with our reading of the Bankruptcy Protection Act, the legislative history to that Act, and the relevant case law." *In re Chateaugay Corp.*, 945 F.2d 1205, 1211 (2d Cir. 1991), *cert. denied sub nom. United Mine Workers of America 1974 Ben. Plan and Trust* v. *LTV Steel Co.*, 502 U.S. 1093 (1992).

This decision became final with the denial of *certiorari* by this Court. LTV Steel and its creditors continued negotiation toward a plan of reorganization on the assumption that Wage Agreement liability had been resolved.

The LTV companies were in Chapter 11 for nearly seven years. Over 44,000 proofs of claim, seeking on their face

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1. This statute, which became Section 1114 of the Bankruptcy Code, provides that retiree health benefits provided under an effective contract cannot be abrogated unilaterally by a debtor prior to engaging in bargaining. Contractual obligations which expire by their own terms during a bankruptcy are not extended by the statute.

over $320 billion, were filed. More than two-thirds, or nearly 30,000 of these claims, related to retiree or employee benefits. The claims were filed by thousands of retirees, several unions and retiree trusts, the Pension Benefit Guaranty Corporation, the Department of Labor, and the Internal Revenue Service.

A plan of reorganization was formulated which reflected arduously negotiated agreements among tens of thousands of creditors as to the appropriate allocation of LTV Steel's present and future value. The plan was approved overwhelmingly by LTV Steel's creditors. On June 28, 1993, the plan was confirmed with the consent of all classes of creditors. The plan provides that LTV Steel and related companies will be operated for the foreseeable future principally to pay LTV Steel's massive retiree obligations.

**The Coal Act and This Litigation**

In late 1992, nearly eight months before confirmation of the plan, Congress passed the Coal Act. The Act codified the obligations created by the Wage Agreements. The Coal Act created the "Combined Fund" as a successor to the trusts established by the Wage Agreements, and transferred the assets of those trusts to the Combined Fund. The Coal Act imposed upon LTV Steel a contribution obligation to the Combined Fund which had a present value of $140 million and was payable over forty years.[2]

The Coal Act became effective on February 1, 1993, and trustees were appointed for the successor fund. These trustees were well aware that the LTV Steel bankruptcy was still pending, and were well aware of the prior litigation to

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2. The Coal Act does not create any public guaranty mechanism, such as the Pension Benefit Guaranty Corporation. The retirees will be paid from the Fund regardless of LTV Steel's participation.

which their privies had been parties. Nevertheless, these trustees made no effort to file claims in the bankruptcy case. Instead, they made a tactical decision to wait and seek payment in full, after the bankruptcy was over. In that way, they hoped to avoid having their claims finally addressed in the Chapter 11 case, along with claims of all other creditors.

LTV Steel commenced this action before confirmation of its plan in order to bring the Combined Fund trustees and their claims into the bankruptcy process. LTV Steel sought a declaratory judgment that the imposition of Coal Act liabilities on LTV Steel would violate the Bankruptcy Code and would also violate the separation of powers doctrine because it would vitiate the prior final judgment holding LTV Steel free of liability for mine worker retiree claims.[3]

The District Court for the Southern District of New York ruled against LTV Steel on all grounds, and the Court of Appeals for the Second Circuit affirmed on all grounds.

## The Court of Appeals' Decision

The Court of Appeals holds explicitly that liabilities under the Coal Act arise from pre-petition acts of LTV Steel, yet holds that these liabilities do not constitute ''claims'', as do all other retiree obligations incurred before the bankruptcy filing. The claims of the Combined Fund thus become a new obligation of the reorganized company, while all other similarly situated claims are bound by the terms of the confirmed plan of reorganization.

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3. In addition, LTV Steel challenged the Coal Act on due process and takings grounds. LTV Steel does not concede the correctness of the decision below in any respect but limits its petition for *certiorari* to its challenges based on bankruptcy and separation of powers grounds.

The Court of Appeals recognizes that the Coal Act imposes liability solely based upon prior status as a Wage Agreement signatory and previous employer of mine workers. "The Coal Act triggers current and future liabilities on the basis of past actions, in this case the hiring and firing of workers and the signing of a National Bituminous Coal Wage Agreement." App. A-28. And again, "the Coal Act reinforces the centrality of the employment relationship to the imposition of liability." App. A-35. LTV Steel's liability was found to arise exclusively from its pre-petition acts. Referring to LTV Steel's having signed Wage Agreements from 1950 to 1984, and having employed mine workers from 1950 to the early 1980's, the Court observed that, "LTV has by its own voluntary actions formed the connections and undertaken the responsibilities which now constitute the basis of its liability under the Coal Act." App. A-22.

Although the Court of Appeals expressly finds that Coal Act liability arises directly from pre-petition contracts and labor, the Court of Appeals holds that "[Coal Act premiums] do not constitute the maturation of a right to payment that vested at the time the labor was supplied." App. A-41. The Court finds that LTV Steel made an express pre-petition contract to provide lifetime health benefits, but also finds that no right to payment existed until enactment of the Coal Act. App. A-26, 41.

The Court dismisses the bankruptcy challenge to the Coal Act by concluding that pre-petition contractual liability for retiree benefits is completely distinct from post-petition statutory liability, even though that post-petition liability is based on the same contractual liabilities, for the same benefits, for the same acts of LTV Steel, and for the same labor provided by the mine workers, as was the pre-petition liability. "[T]he existence of a prior contractual liability for retiree health benefits does not render pre-petition the later statutory imposition of retiree health care obligations by Congress." App. A-41. The Court thus fails to adhere to applicable canons of

statutory construction which require harmonious reading of federal statutes, choosing instead to interpret the Coal Act to create a conflict with the Bankruptcy Code.[4]

The Court fails to address either the separation of powers challenge to the Coal Act or the *res judicata* implications of the prior decision that held LTV Steel free of mine worker retiree health claims. The Court framed the question before it as: whether a contract may limit Congress' authority to enact subsequent laws reimposing prior contractual obligations. This issue was not dispositive of the case before the Court. Even if Congress has such power in general, this case involved more than a contract right — it involved a prior adjudication that LTV Steel had no liability. The Court acknowledged that "LTV's contractual liability has been held to have been terminated at the expiration of the 1984 Wage Agreement." App. A-36. It failed, however, to recognize that this final adjudication limits the application of the statute in this case. By deciding that the statute could reimpose liability on LTV Steel, thus reversing a prior final judgment, the Court construed the Coal Act so as to place Congress in Constitutional jeopardy.

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4. The Second Circuit goes to some length to conclude that Coal Act premiums constitute "taxes". App. A-42-44. While LTV Steel does not agree, the point is irrelevant. If, as LTV Steel contends, Coal Act premiums are pre-petition claims under the Bankruptcy Code, then they have been discharged. If they are post-petition liabilities, then they must be paid in full regardless of whether they are taxes or any other post-petition obligation. The "tax" finding is of no consequence.

## REASONS FOR GRANTING THE WRIT

The Second Circuit's ruling should be reviewed so that this Court may address an important federal issue on which the circuits have issued sharply conflicting decisions. The issue concerns the definition of "claim", which is the foundation of the Bankruptcy Code. The Second Circuit's decision refuses to treat liabilities based upon pre-petition acts as "claims" under the Bankruptcy Code. Its decision is inconsistent with the decisions of every Court of Appeals, other than the Third Circuit, which have analyzed the scope of the "claim" definition. Finally, its decision is not required by the words of the Coal Act.

The decision also interprets a federal statute in a manner which creates an unnecessary violation of the separation of powers doctrine. The Court of Appeals had previously issued a final judgment that LTV Steel was discharged from liability for health benefits to retired mine workers. No facts have changed since then. No parties have changed since then. No new conduct to form a basis for new liability has occurred since then. New legislation alone is the basis for reversal of the prior final decision.

### I. THIS COURT SHOULD ADDRESS THE CONFLICT AMONG THE CIRCUITS CONCERNING THE REACH OF "CLAIM".

The Second Circuit's decision holds that post-petition legislation may reimpose, upon a reorganized debtor, liability arising from pre-petition conduct. The Court's construction places the Coal Act in conflict the Bankruptcy Code's expansive definition of "claim". The language of the Coal Act does not require this result. The Coal Act may plainly be read to create statutory liabilities which, like all other state and federal liabilities, are subject to resolution under the Bankruptcy Code. Nothing in the statute suggests that Congress intended to insulate this liability from treatment as a

bankruptcy claim or to accord it a collection priority in bankruptcy. Governing canons of statutory construction require that, where possible, federal statutes must be read in harmony. *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974).

The Bankruptcy Code's definition of "claim" is crucial to the Code's fundamental policy objective that all claims arising from pre-petition conduct of the debtor be given the same weight for purposes of distributing the debtor's assets. "Equality of distribution among creditors is a central policy of the Bankruptcy Code." *Begier* v. *Internal Revenue Service*, 496 U.S. 53, 58 (1990). Equality may be accomplished only if all claims are brought within the bankruptcy system and all creditors may rely upon equitable treatment within the system.

> "A profound shift in the relationship between debtors and creditors occurs at the filing of a bankruptcy petition. A new estate is created, comprising both the legal and economic interests of the old debtor and the collective economic and legal rights of the creditors. Creditors lose their individual collection rights against the debtor, and they are forced to deal with an estate operating on behalf of all creditors." ELIZABETH WARREN, BUSINESS BANKRUPTCY 61 (1993).

The Bankruptcy Code is carefully designed to prevent strategic behavior which would undercut equality among creditors. The Code imposes a bright line of cleavage between pre- and post-petition claims. Obligations to pre-petition creditors are set at the time of the filing. The automatic stay prohibits post-petition maneuvering to enhance either the value or priority of a claim. 11 U.S.C. § 362. Distribution on claims is governed by a plan of reorganization upon which creditors vote, and the vote of the majority binds the minority. When a plan of reorganization is confirmed, pre-confirmation "debts", defined as liabilities on "claims", are discharged. 11 U.S.C. §§ 1141(d)(1)(A), 101(12). Creditors may not

choose to wait until after reorganization and then seek to exact payment in full on pre-petition claims.

The Bankruptcy Code provides few deviations from the equality principle. The Code enumerates a handful of narrowly drawn priorities for certain claims. *See* 11 U.S.C. §§ 503, 507; *Nathanson* v. *National Labor Relations Board*, 344 U.S. 25, 29 (1952); *In re Colortex Indus., Inc.*, 19 F.3d 1371 (11th Cir. 1994). These limited priorities are granted to classes of claims, such as wage claims. The statute does not permit discrimination among claims within a given class. In particular, the sections providing procedural protections for union and retiree health claims do not treat particular unions or particular groups differently from others. *See* 11 U.S.C. §§ 1113, 1114. No provision of the Bankruptcy Code permits a creditor to avoid the bankruptcy process and demand post-petition payment in full, as the Combined Fund Trustees do here.

The Bankruptcy Code's definition of ''claim'' is the linchpin of the bankruptcy system.

> ''Claim means
>
> > (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
> >
> > (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured[.]'' 11 U.S.C. § 101(5).

''Claim'' is defined as broadly as possible. ''By this broadest possible definition . . . the bill contemplates that all legal obligations of the debtor, no matter how remote or

contingent, will be dealt with by the bankruptcy case." H.R. REP. NO. 595, 95th Cong., 2d Sess. 309 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266. *See also Johnson* v. *Home State Bank*, 501 U.S. 78 (1991); *In re A.H. Robins Co.*, 880 F.2d 709, 720 n.13 (4th Cir.), *cert. denied sub nom. Anderson* v. *Aetna Cas. and Sur. Co.*, 493 U.S. 959 (1989).

The purpose of the breadth of the definition of "claim" is to accelerate and equalize all liabilities arising from acts of the debtor before the date of cleavage established by the filing of a bankruptcy petition. This broad definition gives the Bankruptcy Code the power to draw in all parties with whom the debtor dealt pre-petition, and to address all their claims on an equal footing in a single forum. Without this power, some creditors would be preferred, and some injured, by the fortuity of the time at which their claims ripen under non-bankruptcy law.

Most of the Courts of Appeals have held that all liabilities arising from pre-petition acts of the debtor are "claims" under the Code, regardless of their status at the time of the filing. Consistent with this analysis, the Seventh Circuit has ruled that liability under a post-petition statute is barred if pre-petition conduct gave rise to liability under existing pre-petition law. Specifically, that court has held that liability under post-bar date environmental laws is barred when some liability existed before the bar date. *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 3 F.3d 200 (7th Cir. 1993). This decision is informed by years of prior case law interpreting the sweeping words and expansive legislative history of the definition of "claim".

The Second Circuit's decision in this case is contrary to this long line of judicial and legislative authority. The decision instead relies upon *In re Penn Central Transp. Co.*, 944 F.2d 164 (3d Cir. 1991), *cert. denied sub nom. Penn Central Corp.* v. *United States*, 503 U.S. 906 (1992), in which the Third Circuit held that liabilities under the Comprehensive Environmental Response, Compensation and Liability Act of

1980 (''CERCLA'') were not discharged by a 1978 order consummating Penn Central's reorganization because claims under CERCLA, enacted in 1980, ''were not then in existence.'' 944 F.2d at 165.

The *Penn Central* decision derives from an analysis first adopted by the Third Circuit in *In re M. Frenville Co.*, 744 F.2d 332 (3d Cir. 1984), *cert. denied sub nom. M. Frenville Co.* v. *Avellino & Bienes*, 469 U.S. 1160 (1985). There, the Third Circuit interpreted the Bankruptcy Code definition of ''claim'' to read out key words — ''unliquidated'', ''contingent'' and ''unmatured''. *Frenville* held that the determination of whether a liability, there for contractual indemnification, was a pre-petition ''claim'' depended upon whether the liability became ripe before the filing of the petition under applicable non-bankruptcy law.

The *Frenville* analysis was, until now, rejected by every other Circuit. *See Lemelle* v. *Universal Mfg. Corp.*, 18 F.3d 1268 (5th Cir. 1994) (rejecting *Frenville* analysis and setting forth current state of law regarding scope of ''claim'' in context of tort liability); *In re Hemingway Transp., Inc.*, 954 F.2d 1, 8 n.9 (1st Cir. 1992) (refusing to follow *Frenville* analysis; ''more recent decisions consistently have declined to accept the *Frenville* reasoning and its failure to accord full breadth to the term 'claim'''); *In re Jensen*, 127 B.R. 27, 31 (Bankr. 9th Cir. 1991) (*Frenville* analysis is inconsistent with the broad statutory definition of ''claim'' and ''contravenes'' the overriding goals of the Bankruptcy Code), *aff'd*, 995 F.2d 925 (9th Cir. 1993); *Grady* v. *A.H. Robins Co.*, 839 F.2d 198, 201 (4th Cir.) (Fourth Circuit observes that ''[w]e have found no court outside the Third Circuit which has followed the reasoning and holding of *Frenville*''), *cert. dismissed sub nom. Joynes* v. *A.H. Robins Co.*, 487 U.S. 1260 (1988).

The Second Circuit's ruling has given the *Frenville* analysis new force and has broadened the conflict among the circuits. As noted by the Tenth Circuit, there is a ''split of

authority regarding when a right of payment of an unmatured claim arises for bankruptcy purposes." *Franklin Sav. Ass'n* v. *Office of Thrift Supervision*, 31 F.3d 1020, 1022 (10th Cir. 1994). The decision therefore merits review by this Court.

The concept of "claim" is at the core of bankruptcy legislation and policy. The Second Circuit decision threatens to erode that concept, with serious implications for future bankruptcies in which debtors seek to address liabilities, unmatured under non-bankruptcy law, such as environmental problems or mass torts. The Bankruptcy Code will be an effective tool for restructuring unmatured liabilities, as Congress intended, only if the Bankruptcy Code definition of "claim" is given the scope Congress intended.

## II. THIS COURT SHOULD ADDRESS SEPARATION OF POWERS ISSUES RAISED BY THE DECISION.

The Second Circuit's interpretation of the Coal Act creates a violation of the separation of powers doctrine. A prior judgment adjudicating the rights of LTV Steel and privies of the Combined Fund became final in 1992. No new facts exist to give rise to new claims. The only change which has occurred is a change in the law. New legislation may not, however, upset a final judgment.

The parties to the prior litigation, and their privies, are bound by the prior decision. *Res judicata* bars the reassertion of claims already finally decided. "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest; and that matters once tried shall be considered forever settled as between the parties." *Baldwin* v. *Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525 (1931). *See also Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 398 (1981). The Combined Fund is a successor of, and is in privity with, the prior trust which contested the issue of LTV Steel's liability for

mine worker retiree benefits to the point of a final judgment. These matters are now forever settled among these parties.

*Res judicata* is not rendered inapplicable by new legislation. On the contrary, the doctrine of separation of powers prohibits Congress from legislatively reversing a final judgment by enacting a new law to be applied to facts already litigated to conclusion. For the legislature to review and reverse a final judgment of the judiciary is a course of conduct prohibited by the Constitution. *Cf. United States* v. *Sioux Nation of Indians*, 448 U.S. 371, 397 (1980) (permitting waiver by the legislature of the government's, but only the government's, *res judicata* rights).

This Court most recently addressed the separation of powers doctrine in *Plaut* v. *Spendthrift Farm, Inc.*, __ U.S. __, 115 S. Ct. 1447 (1995). There, this Court found that a retroactive statute may not require its own application to a case already finally adjudicated, because to do so would violate the separation of powers doctrine. To the extent that a statute requires federal courts to reopen a final judgment entered before its enactment, the statute is unconstitutional.

> "Having achieved finality, . . . a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was." 115 S. Ct. at 1457.

The *Plaut* decision demonstrates the fundamental nature of the separation of powers doctrine. The historic role played in this country's constitutional development by the "sense of sharp necessity to separate the legislative from the judicial power, prompted by a crescendo of legislative interference with private judgments of the courts," is chronicled in the opinion. 115 S. Ct. at 1454. The Federalist Papers set forth

its analytic underpinnings. Very early decisions of this Court established constitutional precedent for the doctrine. *Marbury* v. *Madison*, 1 Cranch 137 (1803). It is not therefore surprising that this Court found that "[a]part from the statute we review today, we know of no instance in which Congress has attempted to set aside the final judgment of an Article III court by retroactive legislation." 115 S. Ct. at 1458.

The Coal Act does not by its terms set aside any prior judgment. There is no indication that Congress intended such a result. But the Second Circuit's interpretation of the Coal Act causes the Coal Act to impose upon LTV Steel exactly the liability that *In re Chateaugay* held that LTV Steel did not have. In *Plaut*, this Court responded to Congressional passage of a statute that by its terms violated of the separation of powers doctrine. In this case, we ask this Court to grant LTV Steel's petition for *certiorari* to affirm that what Congress may not directly effect, no court may accomplish by interpreting a statute to require the same unconstitutional outcome.

## CONCLUSION

The decision of the Court of Appeals for the Second Circuit raises two important federal questions. Each merits review by *certiorari*. Petitioners respectfully request that their petition be granted.

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Respectfully submitted,

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